



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Leslye Corsiglia

SUBJECT: SEE BELOW

DATE: June 11, 2014

Approved

Date

6/11/14

COUNCIL DISTRICT: 3

**SUBJECT: APPROVAL OF A REVISED EASEMENT AND SUBORDINATION
AGREEMENT FOR THE VINTAGE TOWERS APARTMENTS
PROJECT**

REASON FOR ADDENDUM:

Staff was very recently made aware of the timeframe for this request, which needs to proceed in June. A delay in approval until August could create a feasibility challenge for the construction schedule of the Symphony Student Housing project, being developed contiguous to Vintage Towers Apartments. Symphony Development plans to close financing and break ground on its student apartments by early September so that it meets its deadline of opening in August 2016 in time for San Jose State's 2016 fall semester. Its financing partners need City execution of the easements in July, well in advance of construction closing.

RECOMMENDATION

Adopt a resolution authorizing the Director of Housing to:

- (a) Approve an Amended and Restated Parking and Access Easement Agreement between CV Symphony SJSU, LLC, First United Methodist Church at San Jose, and First United Methodist Church Tower Properties, L.P. ("Revised Parking Easement") for the Vintage Towers Apartments ("Project" or "Vintage Towers") located on Santa Clara Street between Fifth Street and Sixth Street in San José; and
- (b) Negotiate and execute a subordination agreement to subordinate the Deed of Trust, Assignment of Rents, Fixture Filing and Rider securing a City loan in the amount of \$2,275,000 for the Vintage Tower Apartments to the Revised Parking Easement.

OUTCOME

Approval of the recommended action will support 119 student apartments to be developed by Symphony Development, located north of Vintage Towers, so that it can start construction in September 2014.

BACKGROUND

Vintage Towers, located at 235 East Santa Clara Street ("Site"), is a mid-rise affordable apartment building for residents at or below 50 percent of Area Median Income ("AMI") and 60 percent AMI. The Project has 58 one-bedroom apartments and one studio apartment. Given these apartment sizes, the 2014 income limits translate to maximum resident incomes of \$42,450 and \$67,900, respectively.

In March 2003, the City Council committed a loan of \$2,275,000 of 20% housing set-aside funds to a legal affiliate of the First United Methodist Church ("Church") to acquire and rehabilitate the former medical services building, built in 1928, in its use as affordable apartments. This rehabilitation followed an earlier conversion of the medical building into an apartment building, assisted by a loan from the Redevelopment Agency that was later repaid by the Church partnership's purchase of the site. The Church's rehabilitation of the Project was completed in 2004, and the City's loan amount was amended in 2006 to \$2,670,000. The loan is secured by a deed of trust, which is recorded against the underlying real property on which Vintage Towers is located and includes the Parking and Access Easement Agreement, which provides parking for Vintage Towers ("City Deed of Trust"). Parking for the Project is currently provided in a concrete parking structure located north of Vintage Towers along 6th Street. The parking structure is seismically unsafe. The City also has recorded 55-year affordability restrictions which it is legally obligated to monitor.

The 1.09-acre site located north and northwest of Vintage Towers and of the newly-rebuilt First United Methodist Church also is owned by the Church. Symphony Development ("Symphony"), a firm based in Southern California, has entered into a purchase and sale agreement with the Church to buy that site. Under Site Development Permit H13-023, issued in November 2013, Symphony obtained land use entitlements to demolish the current concrete parking structure and to build a 119-apartment student housing development in five residential stories located above two stories of at-grade parking ("Student Housing Development"). The Student Housing Development will provide 119 parking spaces for its residents, as well as 59 replacement parking spaces for Vintage Towers' residents, and 19 spaces for the commercial businesses along Santa Clara Street.

Symphony intends to begin demolition of the existing parking structure in late June and begin construction on the student apartments in September.

ANALYSIS

In connection with Symphony's development of the Student Housing Project, Symphony and the Church will execute an Amended and Restated Parking and Access Easement (attached) to reflect changes to the original parking and access easement. The City's approval is required since the parking and access easement is part of the City's security under the City Deed of Trust. The original easement, recorded in 2004, anticipated the development of a Car Barn (parking structure) behind the Church rather than apartments.

There will be a net reduction in the number of spaces serving Vintage Tower, from 104 to 70. However, Section 1(b)(i) of the easement approved in 2004 provided that the number of off-street parking spaces to be provided would be reduced if the number required by law were less than 104. As there has been an increased focus on the use of transit in the past 10 years, the lower number is consistent with the City's Downtown strategy, and exceeds current parking requirements of one space per one-bedroom unit.

The rebuilt parking serving Vintage Towers will be safer seismically, cleaner and better lit than the existing old parking structure. Access from the Project to the parking will now be located from the first floor, which is a preferred, safer alternative as compared to other possibilities of footbridges being constructed on floors two and three. The easement also continues to accommodate the Project's access to utilities, such as the boiler and generator and water storage/fire sprinkler access, located on the student housing site.

Upon approval and recordation of the Amended and Restated Parking and Access Easement, the City will subordinate the City Deed of Trust to the Amended and Restated Parking and Access Easement. Recording in this order is to the City's advantage, as if the City is ever required to foreclose on the Vintage Tower property under the City Deed of Trust or take the Vintage Towers back by a deed in lieu of foreclosure, the Amended and Restated Parking and Access Easement would remain in effect for the benefit of Vintage Towers.

EVALUATION AND FOLLOW-UP

No further reporting on the Amended and Restated Parking and Access Easement Agreement for Vintage Towers will be necessary. The construction progress of the Student Housing Project should be visible from City Hall.

PUBLIC OUTREACH/INTEREST

- ☐ **Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater.** (Required: Website Posting)
- ☐ **Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.** (Required: E-mail and Website Posting)

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☐ **Criterion 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.** (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

This item does not meet any of the above criteria. Nevertheless, a copy of this Memorandum will be posted to the City's website for the June 17, 2014 meeting.

POLICY ALTERNATIVES

To arrive at this proposal, staff considered the following options:

Alternative: *Deny or delay the requested funding commitment.*

Pros: Approval of the parking and access easement, and subordination of the City's deed for Vintage Towers, has been anticipated for 10 years and is necessary for development of the student apartments to proceed. While some of the terms of the easement have changed slightly, the standards are consistent with previously-approved agreements and with today's planning standards for Downtown. Once it is completed, the student apartments have the potential to increase demand for Downtown businesses, increase local vibrancy, and balance the types of housing offered on the north side of San José State's campus.

Cons: A delay or denial of the recommended action would impede Symphony's ability to close construction financing and start construction in September 2014, which would negatively impact its ability to complete construction in time for the start of SJSU's classes in August 2016.

Reason for not recommending: For the reasons above, and as the City supports the dense development of small apartments located Downtown, staff recommends approval of the actions in this Memorandum.

COORDINATION

This Memorandum was coordinated with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This approval is consistent with the City's *Envision 2040 General Plan* in that it supports dense development downtown.

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COST SUMMARY/IMPLICATIONS

There are no cost implications for the City associated with this action.

CEQA

Downtown Strategy 2000 EIR, Resolution No. 72767, as addended by File No. H13-023.

/s/

LESLYE CORSIGLIA

Director of Housing

For questions, please contact LESLYE CORSIGLIA, Director of Housing, at 408-535-3851.